



UNITED STATES PATENT AND TRADEMARK OFFICE

ch

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/092,919	03/08/2002	Kjell Olmarker	003300-914	1488
<div>7590 06/01/2007 Benton S. Duffett, Jr. BURNS, DOANE, SWECKER & MATHIS, L.L.P. P.O. Box 1404 Alexandria, VA 22313-1404</div>			<div>EXAMINER MONDESI, ROBERT B</div>	
			<div>ART UNIT 1652</div>	<div>PAPER NUMBER</div>
			<div>MAIL DATE 06/01/2007</div>	<div>DELIVERY MODE PAPER</div>

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/092,919	Applicant(s) OLMARKER, KJELL	
	Examiner Robert B. Mondesi	Art Unit 1652	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 March 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 and 23-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 23-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on March 26, 2007 has been entered.

Claims 11-22 have been canceled. **Claims 26-28** have been added and are new. **Claims 1-10 and 23-28** are presently pending and under examination.

Information Disclosure Statement

The IDS filed July 20, 2006 has been received and is signed and considered, a copy of the PTO 1449 is attached to the following document.

Maintenance of rejections

Claim Rejections - 35 USC § 102

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-10 and 23-25 remain rejected and **claims 26-28** are rejected under 35 U.S.C. 102(e) as being anticipated by Reuben et al., United States Patent Application Publication US 2002/0072596.

The above rejections were explained in the previous Office action.

Response to applicants' arguments

In regards to the rejection of **claims 1-10 and 23-25** under 35 U.S.C. 102(e) as being anticipated by Reuben et al., applicants assert that **claim 23** has been amended to refer to "peptides derived from lactoferrin" and according to the present application as filed, "peptides derived from Lactoferrin" are exemplified as those peptides disclosed in WO 00/0730, i.e. peptides derived from amino acid 12 to amino acid 40, of human lactoferrin. Applicants also discuss the efficacy of particular peptides derived from lactoferrin exhibited by experiments performed by Dr. Kjell Olmarker.

Applicants' arguments have been considered but have not been found persuasive. First and foremost examiner must point out that applicants' arguments have been provided only in view of amended **claim 23**, which is a dependent claim that depends from independent **claim 1**. Even if the examiner were to find applicants arguments persuasive the rejection of **claims 1-10 and 24-25** would still remain and hence the application would not be in condition for allowance. However there are presently outstanding issues remaining with the allowance of dependent claim 23.

It is noted that the features upon which applicants rely on (i.e., peptides derived from amino acid 12 to amino acid 40, of human lactoferrin and arguments provided by Dr. Kjell such as the efficacy of various lactoferrin peptides) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Applicants are more than welcome to amend the independent **claim 1** of the present application in order to provide

Art Unit: 1652

information with regards to the amino acid sequence of the intended lactoferrin derivative peptide of the invention. For example, the amino acid sequence of HLBD1 or HLBD9 can be included in the claims, wherein the amino acid sequence of the said peptide is designated by a SEQ ID NO:.. Meanwhile the scope and breadth of **claim 23** and all of the other pending claims that are under examination in this application, do in fact include the administering of lactoferrin peptides provided in the cited reference. In other words so long as the applicants maintain the language of derived from lactoferrin without specifically indicating the amino acid sequence of the derived peptide the claims are sufficiently broad and will remain rejected.

Most importantly, it is of interest that the applicants themselves have clearly stated on the record that Ruben discloses transferring sequences two of which SEQ ID NO: 4 and SEQ ID No: 6, can be derived from lactoferrin, see remarks page 1, paragraph 4, lines 1-2.

Furthermore applicants are reminded that the exemplification of the intended peptides that are disclosed in WO 00/0730 is not a proper incorporation by reference since the said reference is not a US patent or a US Patent publication. In such cases essential matter cannot be properly incorporated in the patent application. The incorporation of essential material in the specification by reference to an unpublished U.S. application, foreign application or patent, or to a publication is improper. Applicant is required to amend the disclosure to include the material incorporated by reference, if the material is relied upon to overcome any objection, rejection, or other requirement imposed by the Office. The amendment must be accompanied by a statement

Art Unit: 1652

executed by the applicant, or a practitioner representing the applicant, stating that the material being inserted is the material previously incorporated by reference and that the amendment contains no new matter. 37 CFR 1.57(f).

Claims 26-28 are reject because the claims do not provide any new limitations and instead appear to be rewrite of presently rejected **claims 1 and 2**.

Conclusion

No claims are allowed

Accordingly, **THIS ACTION IS MADE FINAL**. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

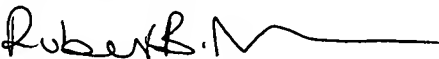
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert B. Mondesi whose telephone number is 571-272-0956. The examiner can normally be reached on 9am-5pm, Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ponnathapu Achutamurthy can be reached on 571-272-0928. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Robert B Mondesi
Examiner
Art Unit 1652


S-16-07